APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1826-67

GILBERT A. CUNEO, ET AL., *Plaintiffs,*

v.

JAMES A. SCHLESINGER, ET AL., *Defendants.*

The Interrogatories heretofore served by Plaintiffs in the above captioned suit are responded to as follows:

Affidavit of Sybil L. Taylor

State of Virginia,
City of Alexandria, ss:

SYBIL L. TAYLOR, Being duly sworn deposes and says:

I have been the Records Administrator of the Defense Contract Audit Agency (DCAA) since July 1973; my duties include serving as Publications Control Officer for Headquarters, DCAA. The principal publication under my control is the Defense Contract Audit Manual.

In response to Interrogatory No. 1 which is set out immediately below:

> State the number of copies of the Defense Contract Audit Agency Manual (the Manual) that have been distributed to persons other than employees of the Defense Contract Audit Agency.

Department of Defense activities, other than the DCAA, were furnished 1,343 copies of the Manual; distributees

outside the Department of Defense were furnished 901 copies of the Manual; the total of copies thus distributed is 2,244.

In response to Interrogatory No. 2 which is set out immediately below:

> State the name and address of each person on the mailing list to receive copies of supplements to the Manual.

Attached hereto is a copy of the mailing list for copies of revisions to the Manual. Some addressees received more than one copy. It should be noted that this listing changes from time to time as addresses are added and others are deleted. All revisions are not mailed directly by DCAA. Addresses listed on pages 15 through 23 are forwarded in bulk to the Navy for distribution through Navy channels.

• • • • • • • • • • •

/s/ SYBIL L. TAYLOR
Sybil L. Taylor

(Subscription Omitted in Printing)

Italian Embassy
Office of the Air Attache
2110 Le Roy Place, NW
Washington, DC 20008

German Military Representative,
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APPENDIX B

12 February 1974

Raymond S. E. Pushkar, Esq.
Sellers, Conner & Cuneo
Commonwealth Building
1625 K Street, N. W.
Washington, D. C. 20006

Contract Appeals Division
Office of the General Counsel
Department of the Navy
Washington, D. C. 20360
Attention: Samuel Fishman, Esq.
Associate Counsel

Re: ASBCA No. 17130
Appeal of LTV Aerospace Corporation
Under Contract No. N00019-68-C-0571

ASBCA No. 17131
Appeal of Advanced Technology Center, Inc.
Under Contract No. N00017-69-C-1422

Gentlemen:

By letters dated 11 January 1974 (one on each appeal) appellant filed applications for Board orders ordering the Government to produce for inspection and copying certain papers that appellant had been denied during voluntary discovery conducted by the parties. The papers here concerned were described in the applications as follows: (Other papers concerned in the applications were produced for *in camera* inspection, inspected, and ruled on at the pre-hearing conference held on 29 and 31 January 1974.)

(1) DCAA audit manual

• • • • • • • • • • •

It is not clear to the Board whether the Government brought the entire DCAA audit manual to the conference.

The manual was reliably described as being in three volumes some eight to ten inches thick and, as described by Government counsel, the Board was persuaded that the entire manual would not be relevant or material to the issues involved in these appeals and that the production of the entire manual was not required. The Board's impression is that certain portions of the manual, the portions described by the Government as being in the nature of a "game plan" or "play book", may be privileged. The Board was not persuaded that the entire manual was privileged. The Board did not order that the entire manual be produced for its *in camera* inspection and the Board has not inspected the entire manual.

Government counsel did bring to the conference copies of certain pages of the manual containing information with respect to Leasing vs. Purchasing, Rental Costs (ASPR 15-205.34), and Leasing Costs. The issues in the two appeals concern such matters and, more specifically the meaning of ASPR 15-205.34.

The presiding Board Member (Administrative Judge Winter) requested that the Government present to him for his *in camera* inspection the pages of the manual as described above. The Government vigorously, but respectfully, declined to do so. The presiding Board Member then ordered that the pages be presented to him for his *in camera* inspection and this order was complied with. Time did not permit the inspection of the pages, and a ruling thereon, at the conference. Such an inspection has now been made and the Board's ruling will be made in and by way of this letter.

• • • • • • • • • • •

In ordering that the pages be produced for the *in camera* inspection of the Board the Board noted (1) that it was aware of no order or instruction by the Secretary of Defense (or, the Board now notes, parenthetically, by the

Secretary of the Navy, he being the Secretary of the department which awarded the contracts concerned) that the manual (or parts thereof) was not to be presented to, or ordered produced by, the Board for the Board's *in camera* inspection, and that therefore the Board, as the representative of the Secretary under its charter, in accordance with its Rules (which the Board notes have been approved by the Secretaries of the Departments concerned) would have to decide whether to order the production of the pages concerned and (2) that the request before the Board was not under the Freedom of Information Act but was instead under the Board's Rules and with respect to an appeal before the Board for decision, and that the fact that a document was, or was not, obtainable under the Act was not determinative as to whether it was, or was not, obtainable under Court and Board discovery rules.

The Board has now completed its *in camera* inspection of the pages of the DCAA audit manual produced for its inspection by the Government. By way of this letter it holds that they are subject to discovery by appellant and copies of such pages are sent to appellant as inclosures to this letter. The principal reason for the Board's ruling is that it considers the pages to contain relevant and material information with respect to a principal issue in the appeal, that issue being the meaning of the contract provision concerned. In so stating the Board notes that the pages concerned are not a part of the contracts concerned (either directly or by way of incorporation by reference) and therefore the Board does not presently consider that either party is bound by information on the pages. The Board's present understanding is that the DCAA audit manual is not a manual with which the contractors are obligated (by contract provision or otherwise) to comply. There is no present evidence before the Board showing that the contractors were aware of the contents of the pages or relied thereon prior to the time the disputes arose. The pages

do indicate, however, what some unidentified but presumable [*sic*] knowledgeable persons understand the contract provision concerned to mean and they could lead to the production of other relevant evidence.

• • • • • • • • • • •

• • • While the pages concerned clearly do contain advice by DCAA to its auditors as to DCAA's understanding as to what ASPR 15-205.34 means and as to matters to be considered in determining whether certain claimed costs are allowable thereunder, the Board does not consider that such advice is in the nature of privileged advice and recommendations concerning policy and legal matters. The pages do not contain advice and recommendations as to what policy should or should not be adopted or what legal position should or should not be taken, but instead purport to state the NCAA's understanding as to what the policy as it is expressed in ASPR 15-205.34 is and what the legal position so expressed is.

• • • • • • • • • • •

By order of the Board:

GEORGE L. HAWKES, Recorder
Armed Services Board of
Contract Appeals

Incls:
pages as follows from DCAA audit manual

1108 July 65
1109 July 65
1107 Aug 66 Rev 3
1108 Aug 66 Rev 3
1109 Feb 68 Rev 19
1107 Feb 71 Rev 50
1108 Sep 69 Rev 34
1109 Sep 69 Rev 34
1109.1 Sep 64(sic) Rev 34
Chap XI index I Feb 73 Rev 66
Chap XI index II June 73 Rev 67
1107 Aug 71 Rev 55
1108 Aug 71 Rev 55
1108.1 Aug 71 Rev 55
1109 May 72 Rev 60

APPENDIX C

GOVERNMENT PRIME CONTRACTS AND SUBCONTRACTS SERVICE

VOLUME III

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Published by Procurement Associates, Inc.
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Covina, California 91724
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DEFENSE CONTRACT AUDIT MANUAL

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APPENDIX D

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v.

JAMES A. SCHLESINGER, ET AL., *Defendants.*

Affidavit of Sybil L. Taylor

State of Virginia,
City of Alexandria, ss:

SYBIL L. TAYLOR, Being duly sworn deposes and says:

1. Since July 1973 I have been the Records Administrator of the Defense Contract Audit Agency (DCAA); my duties include serving as Publications Control Officer for Headquarters, DCAA. The principal publication under my control is the Defense Contract Audit Manual. The control system for this publication utilizes an identification number which is placed on each copy issued. Although some copies were issued years ago without identification numbers, all copies, whether numbered or not, are controlled.

I have examined the unnumbered copy of the Defense Contract Audit Manual which Mr. Kleman, of the Office of Counsel, turned over to me on 21 October 1974. I have searched all records available but am unable to establish how the library of the Armed Services Board of Contract Appeals obtained this copy.

/s/ SYBIL L. TAYLOR
Sybil L. Taylor

(Subscription omitted in printing)

NOTICE OF CONTRACT COSTS ?ENDED AND/OR DISAPPROVED PAGE OF PAGES

(Name and address of contractor)	CONTRACT NUMBER	VOUCHER NUMBER
	NOTICE NUMBER	DATE OF NOTICE

1. This notice is issued pursuant to the authority of Paragraph VII B. of DoD Directive 5105.36, as implemented by Armed Services Procurement Regulation. It constitutes advice of costs suspended and/or disapproved incident to the audit of the above referenced voucher. Description of items and reasons for action are shown below.
2. SUSPENDED COSTS, as referred to herein, are costs which, for the reasons shown below, appear questionable but on which final determination has not been made.
3. DISAPPROVED COSTS, as referred to herein, are costs which, for the reasons shown below, have been determined by the undersigned to be unallowable.
4. As to any disapproved costs identified herein, this Notice constitutes a final decision of the Contracting Officer, effective sixty days after the date of its receipt by the Contractor, unless the Contractor mails or furnishes to the cognizant Administrative Contracting Officer a written appeal before the expiration of such sixty-day period. If this Notice becomes a final decision of the Contracting Officer by virtue of expiration of the sixty-day period, it may be appealed in accordance with the provisions of the "Disputes" clause of the contract identified above. If the Contractor decides to make such an appeal, written notice thereof (in triplicate) must be mailed or otherwise furnished to the Contracting Officer within thirty days from the date this decision becomes effective. Such notice should indicate that an appeal is intended and should reference this decision and identify the contract by number. The Armed Services Board of Contract Appeals is the authorized representative of the Secretary for hearing and determining such disputes. The rules of the Armed Services Board of Contract Appeals are set forth in the Armed Services Procurement Regulation, Appendix A, Part 2.

DCAA AUDITOR	DATE	ADDRESS	SIGNATURE

CONTRACTOR'S ACKNOWLEDGMENT OF RECEIPT - The contractor or his authorized representative shall acknowledge receipt of this notice to the DCAA auditor. One copy of the acknowledged notice will be submitted to the cognizant Administrative Contracting Officer.

DATE OF RECEIPT	TYPED NAME AND TITLE OF AUTHORIZED OFFICIAL	SIGNATURE

ITEM NO.	DESCRIPTION OF ITEMS AND REASONS FOR ACTION	AMOUNT OF COSTS	
		SUSPENDED	DISAPPROVED

DCAA FORM 7 SUPERSEDES CD FORM 336 EDITION OF 1 MAR 56